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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

AFSHAN MULTANI, et al., Plaintiffs and Respondents, v. CASTLE GREEN HOMEOWNERS ASSOCATION, et al., Defendants and Appellants.	B278397 (Los Angeles County Super. Ct. No. GC044440)

APPEAL from a judgment of the Superior Court of Los Angeles County, Laura A. Matz, Judge. Affirmed.

The Law Office of John Derrick and John Derrick for Plaintiffs and Respondents.

Lewis Brisbois Bisgaard and Smith and Roy G. Weatherup; Richardson Ober and Kelly G. Richardson for Defendants and Appellants.

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The Castle Green Homeowners Association notified Afshan and Rahim Multani that a lien had been recorded against their condominium for unpaid assessment fees. After the Multanis disputed the debt, the Association conducted a nonjudicial foreclosure sale of their property. The Multanis filed a wrongful foreclosure action alleging the Association had failed to comply with various statutory requirements that govern foreclosures conducted to enforce a homeowners' association assessment lien. The trial court found the Association had violated its statutory duties, and awarded the Multanis damages and attorney's fees.

The Association appeals the judgment, contending that: (1) the Multanis lack standing to pursue their claims; (2) the Multanis failed to prove the Association violated any statutory duty governing the foreclosure process; and (3) the trial court had no authority to award the Multanis damages or attorney's fees. We affirm.

FACTUAL AND PROCEDURAL HISTORY

A. Summary of the Multanis' Complaint

In January 2010, plaintiffs Afshan and Rahim Multani filed a complaint against the Castle Green Homeowners Association (the Association) and numerous other parties arising from a foreclosure of their condominium unit. The complaint alleged that, beginning in 2005, the Multanis became involved in a long-running dispute with the Association and its agents regarding unpaid homeowner assessment fees. In February of 2008, the Association recorded a notice of delinquent assessment lien against the Multanis' property. Approximately six months later, the Association and its trustee, Witkin & Neal, issued notice that a nonjudicial foreclosure sale was scheduled for

January 27, 2009. After several postponements, the Association sold the property to Pro Value Properties (Pro Value) at a foreclosure sale held on July 23, 2009. (See *Multani v. Witkin & Neal* (2013) 215 Cal.App.4th 1428, 1434-1436 (*Multani*).[1])

The complaint alleged the Association and its agents, LB Property Management and Witkin & Neal, failed to notify the Multanis when the foreclosure was scheduled to occur, and then failed to notify them that the sale had been completed. The Multanis alleged they first learned about the foreclosure sale after Pro Value served them with an unlawful detainer complaint alleging that a deed of sale had been recorded on October 24, 2009. Shortly after the Multanis received the complaint, Pro Value changed the locks on their condominium unit, and threatened to have the Multanis arrested for trespass. Rather than risk arrest, the Multanis relinquished possession of their unit, and sued the Association and its agents. (See *Multani, supra*, 215 Cal.App.4th at pp. 1436-1437.)

The Multanis' complaint alleged several claims seeking to set aside the foreclosure sale, including quiet title, wrongful foreclosure, cancellation of deed, rescission and declaratory relief. The claims asserted the Association had failed to comply with several notice and procedural requirements set forth in the Davis-Stirling Common Interest Development Act (Civil Code,

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1 As discussed in more detail below, in *Multani, supra*, 214 Cal.App.4th 1428, we reversed the trial court's order granting the Association's motion for summary judgment. *Multani* provides a more thorough summary of the allegations in the plaintiffs' complaint, and the trial court proceedings that occurred prior to the events that gave rise to the current appeal.

§§ 4000 *et seq*.; formerly Civil Code, §§ 1350 *et seq*.[2]) (the Davis-Stirling Act or the Act) that govern nonjudicial foreclosures predicated on assessment liens. According to the complaint, these statutory violations resulted in the wrongful termination of the Multanis' interest in their property, and rendered Pro Value's title void. (See *Multani, supra*, 215 Cal.App.4th at p. 1437.)

The complaint also pleaded numerous tort claims based on conduct the defendants had allegedly engaged in during and after the foreclosure proceeding, which included intentionally "'impos[ing] unwarranted dues and other charges'" (*Multani, supra*, 215 Cal.App.4th at p. 1437), and interfering with the Multanis' relationships with their prospective tenants.

B. Summary Judgment Proceedings

1. The trial court's grant of summary judgment

In June 2011, the Association and its agents (collectively the Association) filed a motion for summary judgment arguing that: (1) the undisputed evidence established the Association had substantially complied with all statutory requirements governing the nonjudicial foreclosure process; (2) the Multanis' remaining claims were predicated on the processing of a foreclosure, which was privileged activity under Civil Code section 47, subdivision (b). (See *Multani, supra*, 215 Cal.App.4th at pp. 1437-1438.) The

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2 At the time the Multanis initiated their suit, the Davis-Stirling Act was set forth at Civil Code section 1350, *et seq*. Effective January 1, 2014, however, the Act was "repealed, reenacted and renumbered" as Civil Code §§ 4000 *et seq*. (*Seahaus La Jolla Owners Assn. v. Superior Court* (2014) 224 Cal.App.4th 754, 760, fn. 1.) The parties' briefs refer to the prior version of the Act, and we therefore do the same.

trial court granted the motion in its entirety, and entered a judgment dismissing the Association from the case.

Defendant Pro Value then filed a motion for judgment on the pleadings arguing that the court's ruling in favor of the Association precluded plaintiffs' derivative claims against Pro Value, which sought to cancel the title Pro Value had acquired at the foreclosure sale. The court granted Pro Value's motion, and entered judgment against the Multanis. (See *Multani, supra*, 215 Cal.App.4th at pp. 1442-1443.)

2. <u>Multani v. Witkin & Neal</u>

In *Multani, supra,* 215 Cal.App.4th 1428, we reversed the judgment with respect to the plaintiffs' claims against the Association that sought to set aside the foreclosure sale. In our analysis, we explained that the Association had failed to make a prima facie evidentiary showing that it provided the Multanis notice of their 90-day right to redemption as required under Civil Code section 1367.4, subdivision (c)(4) and Code of Civil Procedure sections 729.035 and 729.050. (*Id*. at pp. 1449-1450.) We further concluded, however, that plaintiffs had forfeited all of their remaining claims, including all claims alleged against the purchaser Pro Value, by failing to provide "'adequate factual or legal analysis.' [Citation.]" (*Multani, supra,* 215 Cal.App.4th at p. 1442 & fn. 6 [plaintiffs "abandoned any claim of error regarding the trial court's order granting [Pro Value's] motion for judgment on the pleadings"].)[3]

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[3] During the pendency of the appeal in *Multani*, Pro Value transferred its interest in the property to APB Properties. After remittitur issued in *Multani*, plaintiffs filed a "Doe amendment"

The case proceeded to a bench trial on the Multanis' remaining foreclosure-related claims against the Association and its agents, LB Property Management and Witkin & Neal.

C. Summary of Evidence at Trial

1. Ownership and tenancy of the Multanis' condominium unit

The evidence presented at trial showed that plaintiff Rahim Multani purchased the condominium in October 1998 for his then-girlfriend, Shayna Wang, to occupy.[4] Wang vacated the condominium in 2007, and Rahim[5] then leased the unit to various tenants. Neither Rahim nor his sister Afshan ever lived in the condominium.

Rahim testified that, on January 3, 2008, he transferred ownership of the condominium to Afshan through a recorded deed. Afshan then transferred ownership back to Rahim on February 8, 2008 "by virtue of an unrecorded [g]rant [d]eed of

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in the trial court naming APB as "Doe defendant 1." APB filed a motion for summary judgment arguing that plaintiffs' claims were barred by the doctrine of res judicata because the court had already entered a judgment in favor of APB's predecessor in interest, Pro Value. The trial court granted summary judgment, and we affirmed the judgment in an unpublished opinion. (See *Multani v. APB Properties* (June 13, 2016, No. B260610) [nonpub. opn.], 2016 WL 3397208.)

4 Our factual summary of the evidence at trial is based on the findings of fact set forth in the trial court's statement of decision. Neither party has challenged those findings.

5 Because Rahim and Afshan Multani share the last name, for the purposes of clarity, we refer to them by their first names.

that date. . . ." Rahim never recorded the deed, and Afshan remained record title holder until the foreclosure sale.

2. The Multanis' mailing address

The Association retained a property manager to collect monthly assessments, prepare and serve pre-lien notifications of delinquent assessments and record assessment liens. In late 2000, the Association hired D&J Properties to serve as the property manager. Prior to taking over the management duties, D&J sent a letter requesting that unit owners confirm their contact information. Shortly after the letter was sent, D&J began sending Rahim his monthly assessments to an address located on Madero Street in Montebello, California.

On January 25, 2001, the Secretary of the Castle Green Board of Governors mailed Rahim and other Association members a memorandum regarding the "2001 Buzz Book," a publication the Association intended to distribute at the Association's annual meeting. The memorandum included a blank form requesting that members provide "revisions–if any" to the home address listed on the memorandum. The version of the memorandum the Association sent to Rahim stated that he was a "Non-resident owner," and listed his Madero Street address in Montebello. Rahim testified that Wong, then the tenant at the condominium, changed Rahim's listed mailing address from Madero Street in Montebello to P.O. Box 92341 in Pasadena, California, and then returned the memorandum to an Association representative. Shortly after Wong had returned the memorandum, Rahim began receiving his monthly assessments at the 92341 P.O. Box address.

When LB Property took over management duties from D&J, it continued to mail Multani his monthly assessments and other notices at the 92341 P.O. Box address.

3. The Multanis' history of delinquent assessment fees

In 2006, Rahim became involved in a dispute with the Association about the amount of his unpaid assessments, and began withholding his monthly dues. In December 2007, LB Property sent Rahim a notice stating that a lien would be recorded against his property if he failed to pay the delinquent assessments. The notice's declaration of mailing indicated LB Property had mailed a copy of the notice to Rahim's condominium and to "P.O. Box 82341" in Pasadena, a nonexistent address. After Rahim failed to respond to the notice, the Association recorded a lien against the property, and then mailed Rahim a letter with a copy of the lien. (See Civil Code, § 1367.1, subd. (d)[6] ["a copy of the recorded notice of delinquent assessment shall be mailed . . . to every person whose name is shown as an owner of the separate interest in the association's records"].) As with the prior notice, the Association sent the letter and the lien to Rahim at his condominium and at the incorrect 82341 P.O. Box address.

After Rahim continued to be delinquent in his assessment payments, the Association retained Witkin & Neal (Witkin) to initiate a nonjudicial foreclosure. In April 2008, Witkin sent letters to Afshan and Rahim informing them of their right to dispute the amount of the debt, and to request alternative dispute resolution. (See §§ 1367.1, subd. (c)(2); 1367.4, subd. (c)(1).) Witkin sent a copy of the letter to Afshan and Rahim at

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6 Unless otherwise noted, all further statutory citations refer to the Civil Code.

the condominium, and at the incorrect 82341 P.O. Box. On April 30, 2008, Rahim submitted a check to Witkin for the amount he contended was owed to the Association. Witkin rejected the payment because it was less than the amount the Association claimed was due.

In June 2008, Witkin mailed copies of a notice of default and intent to sell to Afshan and Rahim at the condominium, and at the correctly-numbered 92341 P.O. Box. Pursuant to section 1367, subdivision (j) [requiring service of the notice of default on the owner], Witkin also served the default notice by "substituted" service. The proof of service indicated the notices had been left with the tenant residing at the condominium on October 7, 2008, and also mailed to the unit. Witkin did not, however, provide a declaration of diligence or any other form of documentation showing it had made "any attempt . . . to personally serve the document on either Afshan or [Rahim]."

On October 27, 2008, Rahim sent Witkin a letter disputing the amount of his debt, and requesting that the issue be settled through alternative dispute resolution. He did not receive a response to the letter. Three days after Rahim sent the letter, Witkin mailed a notice of trustee's sale by certified mail to Afshan and Rahim at the condominium, the 92341 P.O. Box and the 82341 P.O. Box. The foreclosure sale was originally scheduled to occur on December 26, 2008, but was postponed several times.

On December 22, 2008, Rahim sent Witkin a second letter that disputed the amount of the debt, and again requested that the matter be resolved through alternative dispute resolution. The Association, however, took no action with respect to the request.

On July 23, 2009, Witkin sold the condominium at a foreclosure sale to Pro Value for $20,200. Five days after the foreclosure sale, Witkin mailed a notice informing Afshan and Rahim that the condominium had been sold, and that they could redeem the property "any time within ninety (90) days after the date of the sale." The declaration of mailing showed the notice was "mailed separately to Afshan and to [Rahim] at the condo address and at the incorrect [82341] P.O. Box." Plaintiffs did not redeem the property, and on November 6, 2009, a trustee's deed upon sale was recorded naming Pro Value as the title holder.

Rahim "testified [at trial that] he never received notice that the condominium had been sold or that he had the right to redeem it and said he had access to sufficient funds and would have redeemed it had he known." Afshan did not testify at trial, and the parties presented no evidence whether she knew about the sale or the redemption period.

D. Post-trial Briefing

1. The parties' closing briefs

In its closing brief, the Association argued it was only required to send Afshan and Rahim the notices regarding the assessment lien and the foreclosure to the condominium unit because there was no evidence the Multanis had ever submitted a written request to receive such notices at a secondary address, as required under section 1367.1, subdivision (k). (See § 1367.1, subd. (k) ["Upon receipt of a written request by an owner identifying a secondary address for purposes of collection notices, the association shall send additional copies of any notices required by this section to the secondary address provided"].)

The Association further argued that even if the evidence did show it had violated the statutory provisions set forth in the

Davis-Stirling Act, the plaintiffs were not entitled to damages because: (1) the tort of wrongful foreclosure can only be brought against "the holder of a power of sale in a mortgage or deed of trust," and not against a homeowners' association seeking to enforce an assessment lien; (2) tort damages were not appropriate for "mere technical violations of the foreclosure process"; and (3) the Davis-Stirling Act set forth the sole remedies available for violations of the foreclosure process, which did not include damages.

The Multanis, however, argued that the undisputed evidence showed the Association and its agents knew the 92341 P.O. Box served as their address, which was sufficient to establish the notice of secondary address required under section 1367.1, subdivision (k). The Multanis further asserted that the undisputed evidence showed the Association had failed to mail a copy of the lien, the notice of the right to engage in dispute resolution and the notice of the right to redemption to that secondary address; instead, it had erroneously mailed those notices to the nonexistent 82341 P.O. Box address.

The Multanis also argued that the Association's statutory violations were sufficient to establish their claim for wrongful foreclosure. Although the Multanis acknowledged wrongful foreclosure claims are traditionally asserted against a lender acting pursuant to a deed of trust, they argued that there was no reason to limit the tort to that specific context. The Multanis further asserted they were entitled to damages, a well-established remedy for wrongful foreclosure.

2. *Trial court's request for supplemental briefing on the question of standing*

After the parties submitted their closing briefs, the trial court requested supplemental briefing "on the issue of who is the proper plaintiff in this matter" given Rahim's testimony that Afshan had become the legal title holder in January 2008, but then transferred ownership back to Rahim one month later through an unrecorded deed.

In response, the Association argued that, under the Davis-Stirling Act, it was only required to provide notice of the foreclosure proceedings to the "record owner," and had no duty to notify any person who had obtained an interest in the property through an unrecorded instrument. Thus, according to the Association, only Afshan had standing to "bring forth any claims of wrongful foreclosure based upon a theory of lack of proper notice."

The Multanis disagreed, asserting that while Rahim was not the owner of record, the Association was nonetheless required to notify him of the foreclosure proceedings because the Association's records continued to list him as the owner, and was aware of his interest in the property.

E. The Trial Court's Ruling

1. *The statement of decision*

The court issued a statement of decision finding that the Multanis had established a claim for wrongful foreclosure, "entitling them to recover damages." The court concluded that both Afshan and Rahim were entitled to notice under the Davis-Stirling Act because they were both owners–one "legal" and one "beneficial"–of the property.

The court rejected the Association's contention that a wrongful foreclosure claim could not be brought against a homeowners' association acting pursuant to an assessment lien: "While the parties have not cited any case, and the court has not discovered any, approving a wrongful foreclosure cause of action in this context, the court is not persuaded such relief should not be available. A wrongful foreclosure action exists where a lender wrongfully forecloses [citation] and no reasoned argument is made, other than there is no reported case permitting it, that it should not exist where a homeowners' association wrongfully forecloses. In both instances, the homeowner is wrongfully deprived of his or her property and should have a remedy."

The court further found the Association's "foreclosure was 'illegal'" because it had failed to send notice of the right of redemption to Rahim's proper secondary address. The court explained that the undisputed evidence established the Association had only mailed the notice to the condominium and an incorrect P.O. Box, which "was not compliant with the code because [Rahim] did not live in the unit and the [Association] knew that and had notice of his secondary address."[7]

The court rejected the Association's contention that it had no duty to mail the notice to the 92341 P.O. Box because the

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[7] The trial court's statement of decision clarified that although the Association had violated its statutory duties by failing to mail the notice of the right to redemption to Rahim's proper secondary address, the plaintiffs had provided no evidence that Afshan "ever gave the [Association] notice [that] . . . the [92341] P.O. Box . . . was [also] her intended secondary address." Thus, according to the court, "the mailing [of the notice] to [Afshan] at the condo was most likely compliant with the code." The Multanis conceded this issue at oral argument.

Multanis had failed to produce any evidence showing that they provided formal written notice identifying the P.O. Box as their secondary address. The court explained that, since at least 2005, the Association had sent the monthly assessments to the 92341 P.O. Box, and had "also attempted to mail all of the notices required for the foreclosure process to that secondary address, but simply used the wrong box number on the envelopes." According to the court, it was "[c]lear[] [that], at some point in the past, [Rahim] gave appropriate notice of his secondary address to the [Association] and it [was] likewise clear that the [Association] knew of that address and simply was negligent in typing the P.O. Box number on the envelopes. The court finds sufficient notice of a secondary address had been given to, and received by, the [Association] for purposes of Davis-Stirling and that any failure to use that address was the result of its negligence, not the result of a failure of notification on the part of [Rahim]."

The court likewise found the Association's mailing errors, particularly its failure to send notice of the right of redemption to the correct address, were prejudicial: "The failure to give Multani notice of the redemption period and the amount for which the property was sold was clearly prejudicial. Multani testified he had access to sufficient funds to redeem the property and he would have redeemed it had he known of the sale. The court finds his testimony reasonable, given that he paid every other overdue assessment lien that had been obtained in the past."

The court also found the Association had committed additional statutory violations that constituted a "second and separate ground for finding the foreclosure was wrongful." Those violations included, among other things, failing to respond to Rahim's request to resolve the unpaid assessment dispute through alternative dispute resolution (§ 1367.1, subd. (c)(1)), failing to send the notice of the delinquent assessment to the appropriate secondary address (§ 1367.1, subd. (a)) and failing to properly serve the notice of default and election to sell as required under section 1367.1, subdivision (j.)

The court calculated the Multanis' damages to be $434,000, which reflected the value of the property at the time of the foreclosure sale plus interest, minus various offsets, including the proceeds from a prior settlement with a co-defendant and unpaid homeowner association assessment fees.

2. The court's award of attorney's fees

Following entry of judgment, the Multanis filed a motion for attorney's fees pursuant to Civil Code section 1354, which provides a fee award to the prevailing party "[i]n an action to enforce the governing documents [of a community interest development]," and Article 13.1(i) of the Association's Declaration of Covenants, Conditions and Restrictions, which provides a fee award to the prevailing party in "any action or proceeding pursuant to this Declaration." The court found the Multanis' claims fell within each of these provisions, and awarded them approximately $720,000 in fees.

DISCUSSION

A. Summary of the Davis-Stirling Act

1. Overview of the Act

"The Davis-Stirling Act governs the creation and operation of common interest developments [CID] such as the condominium development here. Pursuant to the Act, a condominium development may be created when a developer of land records a declaration [of restrictions]," also "knowns as CC&Rs," and "other documents to that effect and thereafter conveys one of the units in the development. [Citation.] [¶] . . . The CC&Rs must set forth a legal description of the development, the name of the [home]owners association [hereafter HOA] that will own or operate the development's common areas and facilities, and the covenants and use restrictions that are intended to be enforceable equitable servitudes." (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development* (2012) 55 Cal.4th 223, 236-237 (*Pinnacle*).)

The Act authorizes an HOA to "levy regular and special assessments sufficient to perform its obligations under the governing documents. . . ." (§ 1366, subd. (a).) An assessment becomes "a debt of the owner of the separate interest at the time the assessment or other sums are levied." (§ 1367.1, subd. (a).) "The debt is only a personal obligation of the owner, however, until the [HOA] records a 'notice of delinquent assessment' against the owner's interest in the development. Recording this notice creates a lien and gives the [HOA] a security interest in the lot or unit against which the assessment was imposed.' [Citations.]. . . . An assessment lien may be enforced 'in any manner permitted by law,' including judicial [and nonjudicial] foreclosure. [Citation.]" (*Diamond v. Superior Court* (2013) 217 Cal.App.4th 1172, 1184 (*Diamond*).)

2. Summary of provisions governing assessment liens and nonjudicial foreclosure

The Act sets forth detailed procedures governing delinquent assessment fees, the recording of assessment liens and the enforcement of those liens through foreclosure.

a. Statutes governing the recording of assessment liens

Unless an HOA's CC&Rs provide for a longer period, assessments are considered "delinquent 15 days after they become due." (§ 1367.1, subd. (a).) At least 30 days prior to recording a lien for delinquent assessments, the HOA must mail "the owner of record" a notice that sets forth the amount of the debt, the right to request alternative dispute resolution and several additional categories of information. (*Ibid.*)

To obtain a lien against an owner's separate interest in the CID, the HOA must record a notice of delinquent assessment that provides (among other things) a description of the property, the identity of the record owner and the amount of the debt. The HOA must then mail a copy of the notice "to every person whose name is shown as an owner of the separate interest in the HOA's records." (§ 1367.1, subd. (d).)

If, prior to recording a lien, the HOA fails to comply with the applicable notice requirements, it must "recommence the required notice process." (§ 1367.1, subd. (l).) If, after recording the lien, the HOA determines the lien was recorded in error, it must issue a lien release or notice of rescission. (*Id.*, subd. (i).)

b. Statutes governing the foreclosure process

Thirty days after the lien is recorded, the HOA is authorized to "enforce the lien through a nonjudicial foreclosure 'conducted in accordance with [Civil Code] [s]ections 2924, 2924b and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trust.' ([]§ 1367.1, subd. (g).)" (*Multani, supra*, 215 Cal.App.4th at p. 1444.) Prior to initiating a foreclosure, however, the HOA must "offer the owner and, if so requested by the owner, participate in dispute resolution . . . or alternative dispute resolution." (§§ 1367.1, subd. (c)(1)(B); 1367.4, subd. (c)(1).)

The HOA's board of directors is required to decide whether to initiate foreclosure of a lien. (§ 1367.4, subd. (c)(2).) If the board elects to foreclose, it is required to provide "written notice" to the owner "at the most current address shown on the books of the [HOA]. In the absence of written notification [of a secondary address] by the owner to the [HOA], the address of the owner's separate interest may be treated as the owner's mailing address." (§ 1367.4, subd. (c)(3).)

To exercise its power of sale, the HOA must record a notice of default and election to sell, and personally serve the owner (or his legal representative) with such notice. (§§ 1367.1, subds. (d) & (j); 2924, subd. (a)(1).) No earlier than three months after the filing of the notice of the filing of default, the HOA must provide notice of the time and place of sale.

c. The right to redemption

The Davis-Stirling Act provides a dispossessed CID owner a 90-day post-foreclosure sale right of redemption. (§ 1367.4, subd. (c)(4) ["A nonjudicial foreclosure by an association to collect upon a debt for delinquent assessments shall be subject to a right of redemption"]; see also Code of Civil Proc., § 729.035.) "The redemption process, which is normally available only in the context of judicial foreclosure, is governed by requirements set forth in the Code of Civil Procedure. . . . Under [Code of Civil Procedure] section 729.050, the trustee must . . . promptly notify the debtor of his redemption rights: 'If property is sold subject to the right of redemption, promptly after the sale the levying officer or trustee who conducted the sale shall serve notice of the right of redemption on the judgment debtor. Service shall be made personally or by mail. The notice of the right of redemption shall indicate the applicable redemption period.'" (*Multani, supra*, 215 Cal.App.4th at p. 1446 [footnotes omitted].)

The legislative history indicates that the right to redemption set forth in section 1367.4, subdivision (c)(4), adopted by the Legislature in 2005, was intended to provide homeowners additional procedural protections from "the 'extreme hammer of non-judicial foreclosure in order to collect relatively small amounts of overdue assessments.' [Citation.]" (*Multani, supra*, 215 Cal.App.4th at p. 1445.)

B. The Association Has Failed to Establish that Neither Plaintiff Had Standing to Pursue the Foreclosure Claims

1. The Association has failed to establish Rahim Multani lacked standing

The Association argues Rahim lacks standing to pursue any foreclosure claims predicated on alleged violations of the Davis-Stirling Act's notice and procedural requirements. The doctrine of standing addresses the question whether "a party has a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy. . . ." (*Sierra Club v. Morton* (1972) 405 U.S. 727, 731-732.) "At its core, standing concerns a specific party's interest in the outcome of a lawsuit. [Citations.] We therefore require a party to show that he or she is sufficiently interested as a prerequisite to deciding, on the merits, whether a party's challenge . . . has merit." (*Weatherford v. City of San Rafael* (2017) 2 Cal.5th 1241, 1247.)

The Association's standing argument is based on Rahim's testimony that he transferred title of the condominium to Afshan in January 2008 through a recorded deed, and that Afshan then transferred ownership back to him in February 2008 through an unrecorded deed. The Association argues Rahim's unrecorded interest in the property was insufficient to convey standing because: (1) the unrecorded deed did not establish a cognizable ownership interest in the property; and (2) the Davis-Stirling Act only requires an HOA to send lien and foreclosure notices to the "record owner," which was Afshan, not Rahim.

The Association's suggestion that Rahim's unrecorded deed was insufficient to provide him an interest in the property is contrary to law. Section 1217 expressly states that "An unrecorded instrument is valid as between the parties thereto and those who have notice thereof." "Recordation of a . . . deed is not usually required for the validity of a . . . deed, but merely affects its potential efficacy regarding subsequent bona fide purchasers for value. [Citations.] The main purpose of the recording laws is 'to protect those who honestly believe they are acquiring a good title, and who invest some substantial sum in reliance on that belief.' [Citation.]" (*RNT Holdings, LLC v. United General Title Ins. Co.* (2014) 230 Cal.App.4th 1289, 1296 [citing and quoting *Beach v. Faust* (1935) 2 Cal.2d 290, 292–293].) Thus, while Rahim's failure to record the deed from Afshan might have prevented him from enforcing his title against a subsequent bona fide purchaser, he nonetheless retained an ownership interest in the property that provided him standing to assert a claim for wrongful foreclosure.

The Association's second argument, that Rahim lacked standing because the Davis-Stirling Act only requires an HOA to provide lien and foreclosure notices to the "record owner," is also unpersuasive.[8] The Association cites two provisions of the Act, section 1367.1, subdivisions (a) and (d), in support of its contention that only the "record owner" is entitled to notice. The cited sections require that: (1) prior to recording a lien, "the association shall notify the owner of record" of the amount of the debt; and (2) the recorded notice of delinquent assessment must identify (among other things) the "record owner of the separate interest in the [CID]." According to the Association, these two provisions show only the record owner, Afshan, was entitled to notice.

We reject this argument for two reasons. First, the evidence at trial showed that the Association consistently identified Rahim as the "record owner" in the notices and other documents it prepared regarding the lien and the foreclosure. Indeed, the notice of delinquent assessment lien, recorded in February of 2008, and the notice of default and election to sell, recorded in April of 2008, specifically identified Rahim as the record owner of the separate interest that was the subject of the foreclosure. We fail to see how the Association had no duty to provide notice to the person whom it identified as the record owner of the property.

Second, while certain clauses of the Davis-Stirling Act do reference the "record owner," other provisions of the Act require notice to a broader category of persons. Section 1367.1,

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8 This argument appears to conflate the question of Rahim's standing and the merits of his claims, which allege that he did not receive the notice he was due under the Davis-Stirling Act. Although presented as an issue of standing, the Association is effectively arguing that Rahim cannot prevail on his claims because the Davis-Stirling Act did not require it to provide him notice of the assessment liens or the foreclosure proceedings.

subdivision (d), for example, requires an HOA to send a copy of the recorded notice of delinquent assessment "to every person whose name is shown as an owner of the separate interest in the association's records." As the trial court noted in its statement of decision, there was overwhelming evidence that the Association's records listed Rahim as an owner of the property. Other provisions of the Act require that, following the foreclosure sale, the HOA must "serve notice of the right of redemption on the judgment debtor." (Code of Civ. Proc., § 729.050; see also Civil Code, § 1367.4, subd. (c)(4); Code of Civ. Proc., § 729.035.) Again, the evidence at trial, including the information set forth in the Association's own lien and foreclosure notices, demonstrate that the Association considered Rahim to be the judgment debtor.

Given that Rahim did in fact hold a deed to the property, and that the Association considered him to be the actual owner of the property, we conclude he had standing to pursue his claims.[9]

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[9] The Association also argues that its CC&Rs, which limit Association membership to "owners," and define "owner" to mean the recorded title holder, operated to divest Rahim of his association membership at the time he recorded the deed transferring the property to Afshan. The Association further asserts that individuals who do not fall within the definition of "owner" set forth in an HOA's CC&Rs have no standing to pursue claims under the Davis-Stirling Act. The Association cites no legal authority supporting its apparent contention that the definition of "owner" set forth in a housing association's CC&Rs controls who is entitled to notice under the Davis-Stirling Act. In this case, the Association's own notices and records identified Rahim as the owner (and record owner) of the property, and the debtor of the assessment lien. He was therefore entitled to notice under the Act.

2. *The Association's standing argument regarding Afshan is moot*

During the trial court proceedings, the Association specifically argued that Afshan was a "proper plaintiff to bring forth any claims of wrongful foreclosure based on lack of proper notice [under the Davis-Stirling Act]." On appeal, however, it has changed its position, contending for the first time that Afshan lacks standing to assert any claim under the Davis-Stirling Act because there is no evidence she notified the Association that she had become the owner of record, as allegedly required under the Castle Green CC&Rs.

We need not address this issue because our finding that Rahim has standing renders the question of Afshan's standing moot. "As a general matter, an issue is moot if 'any ruling by [the] court can have no practical impact or provide the parties effectual relief.' [Citation.]" (*People v. J.S.* (2014) 229 Cal.App.4th 163, 170.) As explained in more detail below, we affirm the trial court's findings that the Association violated Rahim's statutory rights under the Davis-Stirling Act, and that these violations supported the trial court's award of damages. Moreover, as the Association acknowledges in its briefing, the trial court's judgment was "issued jointly in favor of [Afshan and Rahim]." Thus, even if we were to conclude Afshan lacked standing, that finding would have no practical effect on the Association because it would still be required to satisfy the full judgment with respect to Rahim.

C. Substantial Evidence Supports the Court's Finding that the Association Violated the Davis-Stirling Act

The Association contends there was insufficient evidence to support the trial court's finding that it violated various statutory notice and procedural requirements set forth in the Davis-Stirling Act.

We review findings of fact in a statement of decision for substantial evidence. (*SFPP v. Burlington Northern & Santa Fe Ry. Co.* (2004) 121 Cal.App.4th 452, 462 (*SFPP*).) Under the substantial evidence test, we "view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor. . . ." (*Jessup Farms v. Baldwin* (1983) 33 Cal.3d 639, 660; *Escamilla v. Department of Corrections & Rehabilitation* (2006) 141 Cal.App.4th 498, 514-515.)

1. *The Association was required to send the statutory notices to the 92341 P.O. Box*

The Association's appellate briefing does not dispute the trial court's finding that it erroneously mailed multiple statutory notices, including the notice of the lien and the notice of the right to redemption, to P.O. Box 82341, a non-existent address, rather than the intended address of P.O. Box 92341.[10] The Association contends, however, that these mailing errors were insufficient to establish a violation of the Davis-Stirling Act because the Multanis provided no evidence that they ever gave formal written notice that they wanted the 92341 P.O. Box to serve as their "secondary address."

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10 At oral argument, the Association's counsel asserted for the first time that, contrary to the trial court's findings, the notice of the right to redemption was in fact sent to the proper 92341 P.O. Box address. However, the record shows that, during the bench trial, the Association's own witness testified that the notice was in fact sent to the 82341 P.O. Box, rather than the 92341 P.O. Box. Moreover, the face of the notice indicates that it was mailed to Rahim at the 82341 P.O. Box.

The Association's argument is predicated on section 1367.1, subdivision (k), which provides in relevant part: "Upon receipt of a written request by an owner identifying a secondary address for purposes of collection notices, the association shall send additional copies of any notices required by this section to the secondary address provided. The association shall notify owners of their right to submit secondary addresses to the association, at the time the association issues the pro forma operating budget pursuant to Section 1365. The owner's request shall be in writing and shall be mailed to the association in a manner that shall indicate the association has received it." The Association argues that because the Multanis offered no evidence that they ever submitted a written request to have their notices sent to the 92341 P.O. Box, they failed to prove the Association had a duty to send the notices to that address.

The trial court rejected that argument, concluding that the undisputed evidence plainly showed the Association "had notice of [the] secondary address," which was sufficient for purposes of section 1367.1, subdivision (k). In support, the court cited Rahim's trial testimony that the Association sent him a memorandum in 2001 that acknowledged he was a "non-resident," and requested he revise, if necessary, the off-site address that was currently listed in the memorandum (which referred to a Montebello residence). Rahim also testified that he observed his girlfriend, then the tenant in the condominium, revise the address on the memorandum to reflect the 92341 P.O. Box, and return the memorandum to an Association representative. "From that point forward," the Association began mailing Rahim his monthly assessments to the 92341 P.O. Box, and had also attempted to send all of the lien and foreclosure notices to that address. In the court's view, the fact that the Association knew the Multanis did not live in the condominium, and had actual knowledge of the secondary address, was sufficient to establish that it had a duty to send the statutory notices to the 92341 P.O. Box.

We agree with the trial court's analysis. The clear intent of section 1367.1, subdivision (k) is to ensure that an HOA has actual notice of the property owner's secondary address. That intent was met here, as the Association does not dispute that it had, for years, sent Rahim his assessments to the 92341 P.O. Box, and likewise intended to send all the lien and foreclosure notices to that address.

The Association appears to contend that, even if an HOA is aware of a unit owner's secondary address, under subdivision (k), the HOA has no legal duty to send lien and foreclosure notices to that address unless the property owner can establish he or she mailed a written notice of the secondary address. This "interpretation . . . would elevate form over substance and lead to absurd results" (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1024), effectively permitting an HOA to evade sending foreclosure notices to the property owner's actual and known address. Alternatively, as in this case, the Association's interpretation would insulate an HOA from liability for its own negligent conduct (failing to send the notices to the correct address). Such a result would be inconsistent with the purpose of the Davis-Stirling Act's notice requirements, which is to protect CID owners.

2. *The Association has failed to address the court's additional finding that it violated the Act's alternative dispute resolution provisions*

The trial court found that, in addition to providing improper statutory notice, the Association also violated sections 1367.1, subdivision (c)(1)(B) and 1367.4, subdivision (c)(1), which require "the association . . ., if so requested by the owner, [to] participate in [alternative dispute resolution]." (§ 1367.4, subd. (c)(1).) In support, the court cited evidence showing that Rahim had repeatedly requested alternative dispute resolution, but the Association never responded to those requests.

The Association's appellate brief does not present any argument regarding that finding. "A judgment . . . is presumed correct" (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564); "'[t]he burden of affirmatively demonstrating error is on the appellant.'" (*State Farm Fire & Casualty Co. v. Pietak* (2001) 90 Cal.App.4th 600, 610.) Because the Association has failed to address the court's finding that it violated the Davis-Stirling Act's alternative dispute resolution provisions, we have no basis to revisit that finding on appeal.

D. Damages Were a Valid Form of Remedy

The Association argues that even if there is sufficient evidence to support the trial court's findings that it violated multiple provisions of the Davis-Stirling Act, the court nonetheless erred in awarding the Multanis damages for those violations.[11]

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[11] As discussed above (see *ante* at p. 6, fn. 3), in *Multani*, we affirmed the trial court's dismissal of the Multanis' claim seeking to cancel the deed of the entity that purchased the property at the

Although the Association acknowledges damages are generally an appropriate remedy for wrongful foreclosure (see *Sciarratta v. U.S. Bank National Assn.* (2016) 247 Cal.App.4th 552, 567 (*Sciarratta*) [""the measure of damages for wrongful foreclosure is the familiar measure of tort damages; all proximately caused damages"]; see also *Miles v. Deutsche Bank National Trust Co.* (2015) 236 Cal.App.4th 394, 409-410 (*Miles*); *Munger v. Moore* (1970) 11 Cal.App.3d 1, 7 (*Munger*)), it offers three theories in support of its assertion that damages were not a proper remedy here. First, it contends the tort of wrongful foreclosure cannot be brought against an HOA seeking to enforce an assessment lien. Second, it asserts the Davis-Stirling Act impliedly precludes the remedy of damages. Third, the Association argues it cannot be held liable in tort for "technical violations" of the foreclosure process. Each of these arguments presents a "question . . . of law, so our review is de novo." (*Souza v. Westlands Water Dist.* (2006) 135 Cal.App.4th 879, 887.)

1. *The Multanis were permitted to pursue a wrongful foreclosure claim against the Association*

The Association argues that a wrongful foreclosure claim is a "lender liability tort [that] appli[es only] to mortgage lenders" that caused an illegal sale of property "pursuant to power of sale in a mortgage or deed of trust." According to the Association, the tort does not extend to an HOA executing a power of sale based on an assessment lien.

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foreclosure sale (Pro Value). As a result, setting aside the foreclosure sale was not an available remedy.

a. Summary of the tort of wrongful foreclosure

"A wrongful foreclosure is a common law tort claim. It is an equitable action to set aside a foreclosure sale, or an action for damages resulting from the sale, on the basis that the foreclosure was improper. [Citations.]" (*Sciarratta, supra*, 247 Cal.App.4th at p. 561.) Our courts have traditionally defined the elements of a wrongful foreclosure cause of action to include: '"(1) [T]he trustee or mortgagee caused an illegal, fraudulent, or willfully oppressive sale of real property pursuant to a power of sale in a mortgage or deed of trust; (2) the party attacking the sale (usually but not always the trustor or mortgagor) was prejudiced or harmed; and (3) in cases where the trustor or mortgagor challenges the sale, the trustor or mortgagor tendered the amount of the secured indebtedness or was excused from tendering."' [Citation.] . . . '[A]ll proximately caused damages may be recovered.' [Citation.]" (*Id. at* pp. 561-562.)

In *Miles*, *supra*, 236 Cal.App.4th 394, the court surveyed the origins of the wrongful foreclosure tort, and concluded that "surprisingly few California cases [had] describe[ed] the nature of a wrongful foreclosure cause of action" (*id*. at p. 407.) *Miles* found that *Munger, supra,* 11 Cal.App.3d 1, set forth the "most thorough treatment" of the issue. In that case, the plaintiff had tendered the amount in default prior to the foreclosure, but the lender refused the tender. The lender then sold the property at foreclosure for an amount that exceeded the encumbrances on the property by $30,000. The trial court awarded that amount to the plaintiff in damages.

The appellate court affirmed the damages award, explaining: ""[A] trustee or mortgagee may be liable to the trustor or mortgagor for damages sustained where there has been an illegal . . . sale of property under a power of sale contained in a mortgage or deed of trust. [Citations.] This rule of liability is . . . applicable in California, we believe, upon the basic principle of tort liability declared in the Civil Code that every person is bound by law not to injure the person or property of another or infringe on any of his rights." (*Munger, supra*, 11 Cal.App.3d at p. 7.)

Miles agreed with *Munger's* analysis, concluding that the "tort of wrongful foreclosure satisfies the basic factors for finding a tort duty enunciated in *Biakanja v. Irving* (1958) 49 Cal.2d 647, 650-651. . . . The transaction is intended to affect the plaintiff–it is intended to dispossess the plaintiff; it is easily foreseeable that doing so wrongfully will cause serious damage and disruption to the plaintiff's life; the injuries are directly caused by the wrongful foreclosure; the moral blame of foreclosing on someone's home without right supports finding a tort duty; and recognizing a duty will help prevent future harm by discouraging wrongful foreclosures." (*Miles, supra*, 236 Cal.App.4th at 408.)

b. A dispossessed owner may pursue a wrongful foreclosure claim against an HOA

The Association's argument that a wrongful foreclosure claim can only be brought against a lender acting pursuant to a deed of trust is predicated entirely on the language our courts have generally used in describing the first element of the claim. (See *Sciarratta, supra,* 247 Cal.App.4th at p. 561 [first element requires plaintiff to show the foreclosing entity "caused an illegal. . . sale of real property pursuant to a power of sale in a mortgage or deed of trust"].) The trial court rejected this argument, explaining that the Association had provided "no reasoned argument" why a dispossessed property owner should be permitted to pursue a wrongful foreclosure claim when a lender causes an illegal foreclosure, but not when an HOA "wrongfully forecloses. In both instances, the homeowner is wrongfully deprived of his or her property and should have a remedy."

We agree with the trial court's conclusion that wrongful foreclosure is a cognizable cause of action against an HOA that has caused the illegal sale of property through the enforcement of an assessment lien. The justifications the *Munger* and *Miles* courts identified in support of imposing tort liability on a foreclosing lender apply equally here. Just as a lender is bound by law not to infringe on the notice and procedural rights the Legislature has afforded to mortgagors in the foreclosure process (see *Munger, supra*, 11 Cal.App.3d at p. 7), so too must a foreclosing HOA adhere to the notice and procedural rights the Legislature has afforded to CID owners in the Davis-Stirling Act. Moreover, each of the *Biakanja* factors that *Miles* described in the context of a lender executing a power of sale in a mortgage (see *Miles, supra,* 236 Cal.App.4th at 408) are likewise applicable to an HOA executing a power of sale authorized in the governing CC&Rs.

The Association disagrees, arguing that there is a meaningful "distinctions between [the two types of foreclosures.] A lender's foreclosure based on a mortgage is based on a power of sale which is created by contract not by statute. [Citation.] The power of sale exercised by a trustee or a lender, a profit making entity, is a right authorized solely by the contract between the lender and the trustor as embodied in the deed of trust. [Citation.] While a contractual power of sale is governed by a statutory scheme, the statutes merely restrict and regulate the power of sale. They do not authorize or compel inclusion of a power of sale in a mortgage or deed of trust. [Citation.] . . . On the other hand, the Association is a non-profit mutual benefit corporation and its foreclosure of the property was solely authorized and established by statute, the Davis-Stirling Act."

We find this distinction unavailing. Contrary to the Association's suggestion, its authority to foreclose on the Multanis' property was not "solely . . . established" by the Davis-Stirling Act. While it is true that the Davis-Stirling Act permits HOAs to use foreclosure as a means of enforcing assessment liens, the Association's actual authority to exercise a nonjudicial foreclosure is set forth in the Castle Green's CC&Rs. Article 5 of the CC&Rs expressly grants the Association authority to record delinquent assessments, and to conduct nonjudicial foreclosures based on those liens.

Although statutorily defined as equitable servitudes (see § 1354, subd. (a)), our courts have frequently construed CC&Rs to operate as a contract between the HOA and the unit owner that becomes binding upon the owner's purchase.[12] (See *Villa Milano Homeowners Assn. v. Il Davorge* (2000) 84 Cal.App.4th 819, 825 ["CC&Rs have . . . been construed as contracts," and "unit owners 'are deemed to intend and agree to be bound by' [them]"] [disapproved of on another ground in *Pinnacle, supra,* 55 Cal.4th 223]; *Treo @ Kettner Homeowners Assn. v. Superior Court* (2008) 166 Cal.App.4th 1055, 1066 ["CC&R's can reasonably be 'construed as a contract'"]; see also § 1354 [CC&Rs "shall . . . bind all owners of separate interests in the development"].) Thus, as a condition of their purchase, the Multanis effectively agreed to contractual terms set forth in the CC&Rs that allowed the

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12 In its briefing, the Association acknowledges that "CC&Rs can be considered to be a contract."

Association to conduct a nonjudicial foreclosure in the event they failed to pay their assessments. The Davis-Stirling Act, in turn, describes the manner in which the Association was required to conduct that foreclosure. (See §§ 1367.1, subd. (d); 1367.4, subd. (c).)

This is essentially the same structure that governs the relationship between a mortgagee and a mortgagor in the traditional foreclosure context: the mortgage constitutes a contract that provides the mortgagee the right to foreclose in the event the mortgagor fails to perform its payment obligations; the Civil Code, in turn, sets forth the procedures the lender must follow when executing its right to foreclose.

In sum, we see no reasonable basis for allowing a wrongful foreclosure claim where a lender has caused an illegal sale of property, but precluding such a claim where the entity that has caused the illegal sale is an HOA.

2. The Davis-Stirling Act does not preclude damages as a remedy

The Association next asserts that, regardless of whether a wrongful foreclosure claim may be brought against an HOA, the Davis-Stirling Act impliedly precludes damages as a form of remedy under the "new right-exclusive remedy doctrine." That doctrine provides that "where a statute creates a right that did not exist at common law and provides a comprehensive and detailed remedial scheme for its enforcement, the statutory remedy is exclusive." (*Rojo v. Kliger* (1990) 52 Cal.3d 65, 79 (*Rojo*); see also *Brewer v. Premier Golf Properties, LP* (2008) 168 Cal.App.4th 1243, 1252 ["[w]here a statute creates new rights and obligations not previously existing in the common law, the express statutory remedy is deemed to be the exclusive remedy available for statutory violations, unless it is inadequate.' [Citation.]"].)

The Association contends the Davis-Stirling Act created rights for CID owners that did not previously exist at common law. It further contends the Act sets forth the exclusive remedies that are available when an HOA commits statutory "violations during a foreclosure proceedings." In support, the Association cites section 1367.1, subdivisions (l) and (i). Subdivision (l) states that if an HOA fails to comply with the Act's notice procedures prior to recording an assessment lien, it must recommence the notice process; subdivision (i) states that if an HOA determines "a[n [assessment] lien . . . was recorded in error," it must withdraw or rescind the lien within 21 days.

We do not agree that section 1367.1, subdivisions (l) and (i). set forth a "comprehensive and detailed remedial scheme" (*Rojo*, *supra*, 52 Cal.3d at p. 79) for violations of the Davis-Stirling Act's notice and procedural requirements. These two provisions only address remedies for defects in the notice requirements that govern the recording of the assessment lien; they do not address violations of the numerous additional notice and procedural requirements that govern the foreclosure process that follows the recording of the lien. If an HOA properly records a lien, but then fails to properly conduct the ensuing foreclosure sale, subdivision (l) and (i) provide no guidance as to the appropriate remedy.

In this case, for example, the trial court found that, after recording the lien, the Association initiated the foreclosure without adhering to the Multanis' request for alternative dispute resolution, and then failed to notify the Multanis of their post-sale right to redemption. (See §§ 1367.4, subd. (c)(4); Code of Civ. Proc, §§ 729.035 & 729.050.) The Davis-Stirling Act is silent with respect to the proper remedy for these statutory violations, which were unrelated to the recording of the lien.

3. *The statutory violations in this case were not merely "technical"*

The Association next contends that tort damages are improper for "mere technical violations of the foreclosure process." In support, it cites language that appears in several published decisions stating that "mere technical violations of the foreclosure process will not give rise to a tort claim." (*Miles, supra,* 236 Cal.App.4th at p. 409; *Citrus El Dorado, LLC v. Chicago Title Co.* (2019) 32 Cal.App.5th 943, 952 (*Citrus El Dorado*); *Sciarratta, supra*, 247 Cal.App.4th at p. 562; *Majd v. Bank of America* (2015) 243 Cal.App.4th 1293, 1307 (*Majd*). Although few cases have actually applied this "technical defect" rule, or otherwise examined its meaning,[13] the case law suggests a procedural irregularity may be deemed "merely technical" when the defect did not impact the plaintiff's ability to protect his or her interest in the property.

For example, in *Citrus El Dorado*, *supra*, 32 Cal.App.5th 943, the court concluded that the trustee's inclusion of erroneous contact information in the notice of default was merely a technical defect, and therefore insufficient to establish a wrongful foreclosure claim, because there was no allegation that the plaintiff had ever attempted to contact the trustee. (*Id*. at pp. 951-952.) Similarly, in *Knapp v. Doherty* (2004) 123 Cal.App.4th

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13 Several published cases have quoted this language when summarizing the tort of wrongful foreclosure, but do not actually provide any discussion or analysis of the rule. (See *Sciarratta, supra*, 247 Cal.App.4th at p. 562; *Majd, supra,* 243 Cal.App.4th at p. 1307.)

76, the court held that the defendant's act of notifying the plaintiff of a scheduled foreclosure sale 89 days after recording the notice of default, rather than waiting the full 90 days required under the governing foreclosure statutes, was insufficient to establish a wrongful foreclosure claim because "the slight procedural irregularity . . . did not cause any injury to [b]orrowers." (*Id*. at p. 94.)

Even if we assume the "technical violation" rule described above applies in the context of a foreclosure predicated on an assessment lien,[14] the violations that occurred here were substantial in nature, and the trial court found that they did impact the Multanis' ability to protect their property. As discussed above, the evidence showed the Association and its agents sent many of the statutorily-required notices (including the notice of the right of redemption) to the wrong address, and refused to participate in alternative dispute resolution despite its statutory duty to do so. Moreover, the trial court found credible Rahim's testimony that he would have redeemed the property had he been notified of his redemption right. Accordingly, we

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14 In *Diamond, supra,* 217 Cal.App.4th 1172, the court held that an HOA must strictly comply with the notice requirements set forth in the Davis-Stirling Act, and that "substantial compliance" is insufficient to support a valid foreclosure. (*Id*. at 1191 ["We have found no indication in the legislative history that the Legislature intended that substantial compliance with the statutory notice requirements would be sufficient to protect the homeowner's interest"].) Although *Diamond* involved an action seeking judicial foreclosure, and not a claim of wrongful foreclosure, the court's analysis nonetheless suggests that the Legislature intended strict compliance with the Davis-Stirling Act's notice and procedure requirements.

find no basis to conclude the statutory violations in this case were merely "technical."

E. The Multanis Are Entitled to Attorney's Fees

The Association argues the trial court erred in concluding that the Multanis were entitled to recover their attorney's fees under Civil Code section 1354 and Article 13.1, subdivision (i) of the Caste Green CC&Rs. The former provision provides a fee award to the prevailing party "[i]n an action to enforce the governing documents"; the latter provision provides fees to the prevailing party "in any action or proceeding pursuant to this Declaration." The Association argues neither provision applies here because the Multanis' foreclosure claims did not seek to enforce the CC&Rs, nor were they brought "pursuant to" the CC&Rs. Rather, according to the Association, the claims were brought solely to enforce the statutory protections set forth in the Davis-Stirling Act.[15]

As the Multanis note in their brief, the Association asserted a directly contrary position in a motion for attorney's fees that it filed after obtaining summary judgment in the trial court proceedings. In that motion, the Association successfully argued to the court that the Multanis' foreclosure claims did fall within the attorney's fees provisions in section 1354 and article 13.1 of the CC&Rs, and that that it was therefore entitled to fees as the prevailing party. Although the trial court awarded the Association $90,000 in attorney's fees, our prior decision in

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[15] "The usual standard of review for an award of attorney fees is abuse of discretion. [Citation.] But whether the trial court had the authority to award attorney fees is a legal issue which we review de novo." (*Globalist Internet Technologies, Inc. v. Reda* (2008) 167 Cal.App.4th 1267, 1273.)

Multani reversed the court's grant of summary judgment, and vacated the attorney's fees order.[16]

We agree with the position the Association advocated for at the summary judgment stage of the proceedings. Specifically, we agree the Multanis' claims were brought "pursuant to" the CC&Rs, as that term is used in Article 13.1. As discussed above, while the Davis-Stirling Act sets forth the procedures the Association was required to follow when conducting the nonjudicial foreclosure, the declaration of CC&Rs is the instrument that authorized the Association to impose assessment fees against the Multanis, to record an assessment lien against their property and to utilize nonjudicial foreclosure to enforce that lien. Given that the Association was acting pursuant to the powers granted to it under CC&Rs when it foreclosed upon the Multanis' property, and the Multanis' claims challenge the manner in which the Association executed that power, the action was brought "pursuant to" the CC&Rs.

The Association also appears to argue that the amount of the trial court's fee award was excessive, asserting: "All time claimed for work performed by the Foxx Firm was not at all compensable as the Foxx Firm only handled the unsuccessful causes of action against defendants who were dismissed from the case. There were no common issues to the causes of action that were dismissed and the one successful cause of action for

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16 The Multanis contend that, given its prior motion for attorney's fees, the Association should be judicially estopped from now arguing that the Multanis' claims do not fall within the relevant attorney's fees provisions. We need not address that argument, concluding that the trial court properly found the Multanis were entitled to fees.

wrongful foreclosure. Nor were the causes so inextricably linked making separation impracticable."

The Association's argument is unaccompanied by any citation to, or discussion of, the evidence in the record that supports its claim of an excessive fee award. Instead, the Association simply declares that the trial court improperly awarded fees incurred for work the Foxx Firm performed.

The Association appears to imply we should conduct an independent review of whatever materials we may deem relevant to this argument, and then assess whether those materials show the trial court improperly awarded fees that were incurred for unsuccessful claims. However, "[i]t is not our responsibility to develop an appellant's argument." (*Alvarez v. Jacmar Pacific Pizza Corp.* (2002) 100 Cal.App.4th 1190, 1206, fn. 11; see also *People v. Stanley* (1995) 10 Cal.4th 764, 793 [it "is not our role" to "construct a theory supportive of" appellant's claims]; *Paterno v. State of California* (1999) 74 Cal.App.4th 68, 106 ["An appellate court is not required to examine undeveloped claims, nor to make arguments for parties"].) "One cannot simply say the court erred, and leave it up to the appellate court to figure out why." (*Niko v. Foreman* (2006) 144 Cal.App.4th 344, 368.)[17]

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[17] On the last page of its opening brief, the Association also argues the trial court erred in entering a judgment "in favor of both plaintiffs" because only one of them (the Association does not identify who) owns the property. We decline to address this argument for two reasons. First, the Association has cited no portion of the record indicating it ever raised this issue in the trial court. (See *Newton v. Clemons* (2003) 110 Cal.App.4th 1, 11 ["'It is fundamental that a reviewing court will ordinarily not consider claims made for the first time on appeal which could have been but were not presented to the trial court'"].) Second,

DISPOSITION

The judgment and order awarding attorney's fees are affirmed. The respondents shall recover their costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

STONE, J.*

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the Association has presented no argument explaining how it was prejudiced by this alleged error. As the appellant, the Association "has the burden of affirmatively demonstrating prejudice." (*Christ v. Schwartz* (2016) 2 Cal.App.5th 440, 455 ["Prejudice is not presumed"]; see also *Vaughn v. Jonas* (1948) 31 Cal.2d 586, 601 ["The burden is on the appellant in every case affirmatively to show error and to show further that the error is prejudicial"].) Having presented no argument with respect to prejudice, it has failed to satisfy its burden on appeal. (See *Willhide-Michiulis v. Mammoth Mountain Ski Area, LLC* (2018) 25 Cal.App.5th 344, 367-368 ["Prejudice is not presumed, and 'our duty to examine the entire cause arises when and only when the appellant has fulfilled his duty to tender a proper prejudice argument'"].)

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.